

**TAXATION AND REVENUE DEPARTMENT
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**REGULATIONS PERTAINING TO THE
INTERSTATE TELECOMMUNICATIONS GROSS RECEIPTS TAX ACT
SECTION 7-9C-1 TO 7-9C-11 NMSA 1978**

[3.21.5 NMAC]

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**REGULATIONS PERTAINING TO THE
INTERSTATE TELECOMMUNICATIONS GROSS RECEIPTS TAX ACT
SECTION 7-9C-1 TO 7-9C-11 NMSA 1978**

7-9C-1. SHORT TITLE. -- Chapter 7, Article 9C NMSA 1978 may be cited as the "Interstate Telecommunications Gross Receipts Tax Act.
(Laws 1993, Chapter 30, Section 15)

7-9C-2. DEFINITIONS.--As used in the Interstate Telecommunications Gross Receipts Tax Act:

A. "charges for mobile telecommunications services" has the meaning given in the federal Mobile Telecommunications Sourcing Act;

B. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

C. "engaging in interstate telecommunications business" means carrying on or causing to be carried on the business of providing interstate telecommunications service;

D. "home service provider" has the meaning given in the federal Mobile Telecommunications Sourcing Act;

E. "interstate telecommunications gross receipts" means the total amount of money or the value of other consideration received from providing:

(1) interstate telecommunications services, other than mobile telecommunications services, that either originate or terminate in New Mexico and are charged to a telephone number or account in New Mexico, regardless of where the bill for such services is actually delivered; and

(2) mobile telecommunications services that originate in one state and terminate in any location outside that state, whether within or outside the United States, to a customer with a place of primary use in New Mexico. "Interstate telecommunications gross receipts" excludes mobile telecommunications services provided to a customer with a place of primary use outside of New Mexico, cash discounts allowed and taken and interstate telecommunications gross receipts tax payable for the reporting period. Also excluded from "interstate telecommunications gross receipts" are any gross receipts or sales taxes imposed by any Indian nation, tribe or pueblo; provided that the tax is approved, if approval is required by federal law or regulation, by the secretary of the interior of the United States; and provided further that the gross receipts or sales tax imposed by the Indian nation, tribe or pueblo provides a reciprocal exclusion for gross receipts, sales or gross receipts-based excise taxes imposed by the state or its political subdivisions;

F. "interstate telecommunications service" means the service of originating or receiving in New Mexico interstate and international telephone and telegraph service, including but not limited to the transmission of voice, messages and data by way of electronic or similar means between or among points by wire, cable, fiber-optic, laser, microwave, radio, satellite or similar facilities;

G. "mobile telecommunications services" has the meaning given in the federal Mobile Telecommunications Sourcing Act;

H. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, joint venture, syndicate or other entity; the United States or any agency or instrumentality of the United States; or the state of New Mexico or any political subdivision of the state;

I. "place of primary use" has the meaning given in the federal Mobile Telecommunications Sourcing Act;

J. "private communications service" means a dedicated service for a single customer that entitles the customer to exclusive or priority use of a communications channel or group of channels between a location within New Mexico and one or more specified locations outside New Mexico; and

K. "wide-area telephone service" means a telephone service that entitles the subscriber, upon payment of a flat rate charge dependent on the total duration of all such calls and the geographic area selected by the subscriber, to either make or receive a large volume of telephonic communications to or from persons located in specified geographical areas."

(Laws 2002, Chapter 18, Section 4)

3.21.5.9 - PERSONS ENGAGED IN PROVIDING INTERSTATE TELECOMMUNICATIONS SERVICES - HOTELS AND MOTELS PROVIDING INTERSTATE TELECOMMUNICATIONS SERVICE TO GUESTS:

A. Persons engaged in the business of providing interstate telecommunications in New Mexico are those persons licensed to do so by the federal communications commission or by any agency of the state of New Mexico having authority to license providers of interstate or intrastate telecommunications service.

B Unless the establishment is licensed as required in Subsection 3.21.5.9A NMAC, hotels, motels and similar establishments offering interstate telecommunications service to guests in conjunction with the rental of rooms or other facilities are not "engaging in interstate telecommunications business" for purposes of the Interstate Telecommunications Gross Receipts Tax Act. Receipts of the establishment from providing such service are subject to the provisions of the Gross Receipts and Compensating Tax Act.

C. Section 3.21.5.9 NMAC applies retroactively to transactions on or after July 1, 1992.

[9/16/92, 5/15/97; 3.21.5.9 NMAC - Rn & A, 3 NMAC 21.5.9, 1/15/01]

7-9C-3. IMPOSITION AND RATE OF TAX; DENOMINATION AS INTERSTATE TELECOMMUNICATIONS GROSS RECEIPTS TAX.

A. For the privilege of engaging in interstate telecommunications business, an excise tax equal to four and one-fourth percent of interstate telecommunications gross receipts is imposed upon any person engaging in interstate telecommunications business in New Mexico.

B. The tax imposed by this section shall be referred to as the "interstate telecommunications gross receipts tax".

(Laws 1992, Chapter 67, Section 3)

3.21.5.8 - IMPOSITION BARRED BY FEDERAL LAW - INTERSTATE TELECOMMUNICATIONS SERVICES IN INDIAN COUNTRY FOR TRIBE OR TRIBAL MEMBERS:

A. Receipts of a seller from selling interstate telecommunication services to a purchaser who is an Indian tribe or member thereof on the tribe's territory are not subject to the interstate telecommunications gross receipts tax if taxation of such receipts is prohibited by federal law. Interstate telecommunications service is provided on a tribe's territory when:

- (1) calls originate or terminate through an instrument on the tribe's territory; and
- (2) the service is billed to the Indian tribe or a member thereof.

B. The seller must demonstrate that the interstate telecommunications service is sold to an Indian tribe or member thereof. The seller must also demonstrate that the interstate telecommunications service originates or terminates through an instrument located on the tribe's territory and is billed to the Indian tribe or member thereof. The documents demonstrating that receipts from providing interstate telecommunications services are not subject to tax shall be retained in the seller's records.

(1) The first requirement may be met by obtaining a statement signed by the purchaser that the purchaser is an Indian tribe or member thereof. In the case of the Indian tribe itself, the statement must be attested to by a tribal official. In the case of an individual, the statement must also either specify the purchaser's official tribal or BIA census number or, when the purchaser's Indian tribe does not maintain an official census system, be attested to by an official of the purchaser's Indian tribe confirming this statement. This statement may also be provided to the seller by the Indian tribe on behalf of one or more of its members if attested to by a tribal official. Upon request, the secretary may approve additional methods. This documentation shall be conclusive evidence, and the only material evidence, that the purchaser is an Indian tribe or member thereof.

(2) The second requirement may be met for fixed location instruments if the seller keeps records adequate to document that interstate calls originate or terminate through instruments located on the purchaser's tribe's territory and that the call is billed to the Indian tribe or member thereof. The second requirement may be met for mobile instruments if the seller keeps adequate records to document that:

(a) with respect to charges billed regardless of volume of calls, the purchaser's address is within the purchaser's tribe's territory; and

(b) with respect to charges for calls, the call either originates or terminates within the purchaser's tribe's territory. Sellers of telecommunications services through mobile instruments may estimate the percentage of receipts for the report month from calls through such instruments which do not originate or terminate on the purchaser's tribe's territory. The estimate shall be the total receipts from calls from purchasers whose address is within the purchaser's tribe's territory for the reporting period multiplied by the percentage of actual receipts from calls by those purchasers originating or terminating off the purchaser's tribe's territory during the previous calendar year. The amount of actual receipts during the previous calendar year from off-territory calls shall be determined based upon evidence satisfactory to the department.

C. Receipts from selling interstate telecommunications services in New Mexico in Indian country to the following persons are subject to the gross receipts tax:

- (1) a person who is not an Indian tribe or member thereof;
- (2) a person who is an Indian tribe other than the Indian tribe on whose territory the sale takes place; and
- (3) a person who is a member of an Indian tribe other than the Indian tribe on whose territory the sale takes place except that, if the person is the spouse of a member of the Indian tribe on whose territory the sale takes place, that person will be considered for the purposes of Section 3.21.5.8 NMAC to be a member of the spouse's Indian tribe.

D. Receipts from selling interstate telecommunications services in New Mexico to an Indian tribe or member thereof are subject to the interstate telecommunications gross receipts tax when the instrument through which the calls originate or terminate is located outside the tribe's territory, even if the location is within the territory of another Indian tribe.

E. For the purposes of Section 3.21.5.8 NMAC, the terms "Indian tribe" and "tribe's territory" have the meaning set forth for those terms in Section 3.2.4.7 NMAC.

F. Section 3.21.5.8 NMAC is retroactively applicable to transactions occurring on or after July 1, 1992.

[3/16/95, 5/15/97; 3.21.5.8 NMAC - Rn & A, 3 NMAC 21.5.8, 1/15/01]

7-9C-4. PRESUMPTION OF TAXABILITY.

A. To prevent evasion of the interstate telecommunications gross receipts tax and to aid in its administration, it is presumed that all receipts of a person engaging in interstate telecommunications business are subject to the interstate telecommunications gross receipts tax.

B. If receipts from nontaxable charges for mobile telecommunications services are aggregated with and not separately stated from taxable charges for mobile telecommunications services, then the charges for nontaxable mobile telecommunications services shall be subject to interstate telecommunications gross receipts tax unless the home service provider can reasonably identify nontaxable charges in its books and records that are kept in the regular course of business.

(Laws 2002, Chapter 18, Section 5)

7-9C-5. DATE PAYMENT DUE.

The interstate telecommunications gross receipts tax is to be paid to the department on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

(Laws 1992, Chapter 67, Section 5)

7-9C-6. DEDUCTION--CERTAIN TELEPHONE SERVICES. -- Receipts from the provision of wide-area telephone service and private communications service in this state may be deducted from interstate telecommunications gross receipts.

(Laws 1993, Chapter 30, Section 17)

7-9C-7. DEDUCTION--SALE OF A SERVICE FOR RESALE.

A. Receipts from providing an interstate telecommunications service in this state that will be used by other persons in providing telephone or telegraph services to the final user may be deducted from interstate telecommunications gross receipts if the sale is made to a person who is subject to the interstate telecommunications gross receipts tax or to the gross receipts tax or the compensating tax.

B. Receipts during the period July 1, 1998 through June 30, 2000 from providing leased telephone lines, telecommunications services, internet access services or computer programming that will be used by other persons in providing internet access and related services to the final user may be deducted from interstate telecommunications gross receipts if the sale is made to a person who is subject to the interstate telecommunications gross receipts tax, the gross receipts tax or the compensating tax.

(Laws 1998, Chapter 92, Section 6)

7-9C-8. DEDUCTIONS--TELECOMMUNICATIONS PROVIDERS. --

A. Receipts from interstate telecommunications services that are provided by a corporation to itself or to an affiliated corporation may be deducted from interstate telecommunications gross receipts.

B. For the purposes of this section:

(1) "affiliated corporation" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the subject corporation; and

(2) "control" means ownership of stock in a corporation that represents at least eighty percent of the total voting power of the corporation and has a value equal to at least eighty percent of the total value of the stock of that corporation.

(Laws 1993, Chapter 30, Section 18)

7-9C-9. DEDUCTION; BAD DEBTS.

Refunds and allowances made to buyers of interstate telecommunications services or amounts written off the books as an uncollectible debt by a person reporting interstate telecommunications gross receipts tax on an accrual basis may be deducted from interstate telecommunications gross receipts. If debts reported as uncollectible are subsequently collected, such receipts shall be included in interstate telecommunications gross receipts in the month of collection.

(Laws 1992, Chapter 67, Section 9)

7-9C-10. CREDIT; SERVICES PERFORMED OUTSIDE THE STATE.

To prevent actual multi-jurisdictional taxation of the privilege of engaging in business of providing interstate telecommunications services, any taxpayer, upon proof that the taxpayer has paid a sales, use, gross receipts or similar tax on the same interstate telecommunications gross receipts subject to the interstate telecommunications gross receipts tax, shall be allowed a credit against the interstate telecommunications gross receipts tax to the extent of the amount of sales, use, gross receipts or similar tax properly due and paid to such other state or political subdivision of that state.

(Laws 1992, Chapter 67, Section 10)

7-9C-11. ADMINISTRATION.

A. The department shall interpret the provisions of the interstate telecommunications gross receipts tax.

B. The department shall administer and enforce the collection of the interstate telecommunications gross receipts tax, and the Tax Administration Act applies to the administration and enforcement of the tax.

(Laws 1992, Chapter 67, Section 11)
